

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

PARKERSBURG DIVISION

DANIEL WAYNE CADE,

Petitioner/Movant,

v.

CIVIL ACTION NO. 6:03-0655
(Criminal No. 6:01-00200-01)

UNITED STATES OF AMERICA,

Respondent.

ORDER

Pending before the court are the petitioner's Motion to Reopen under Rule 60(b) [Docket 67], Motion Requesting Extension of Timely Motion [Docket 70], and Motion to Dismiss [Docket 71]. The petitioner's Motion to Reopen under Rule 60(b) was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and has recommended that the court find that the petitioner's Rule 60(b) motion is a successive application for collateral review. The Magistrate Judge further recommends that the court dismiss the petitioner's Rule 60(b) motion for lack of jurisdiction.

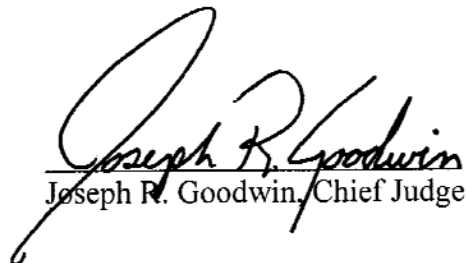
Neither party has filed objections to the Magistrate Judge's proposed findings and recommendations. The petitioner did, however, file a Motion Requesting Extension of Timely Motion. In this motion, the petitioner requests time to obtain authorization for a successive habeas petition from the Fourth Circuit pursuant to 28 U.S.C. § 2244(b)(3). Fifteen days later, the petitioner moved to dismiss his Rule 60(b) motion because he "is filing 2244 for second or successive petition to the Fourth Circuit Court of Appeals."

The petitioner's conduct after the Magistrate Judge issued the proposed findings and recommendation indicates that he does not object to his Rule 60(b) motion being treated as a successive habeas petition. The failure to object to a magistrate judge's report may be deemed a waiver on appeal of the substance of the report and the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *Campbell v. United States D. Ct. N.D. Cal.*, 501 F.2d 196, 206 (9th Cir. 1974). The court has reviewed the Magistrate Judge's findings of fact and recommendations and finds no clear error on the face of the record. Therefore, the court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and orders judgment consistent with the findings and recommendations.

The court **DISMISSES** the petitioner's Rule 60(b) motion for lack of jurisdiction. The court **DENIES** the petitioner's Motion Requesting Extension of Timely Motion and Motion to Dismiss as moot.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: June 2, 2008


Joseph R. Goodwin, Chief Judge